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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058279
Party	Defendant Bo Vallin dba Scandinavian Ski & Sport Shops
Correspondence Address	BO VALLIN SCANDINAVIAN SKI & SPORT SHOPS 16 EAST 55TH STREET NEW YORK, NY 10022 UNITED STATES
Submission	Other Motions/Papers
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Date	11/25/2014
Attachments	Motion to Vacate Default Judgment w Proposed Answer and Certificate of Electronic Filing.pdf(137338 bytes) Bruce D. Katz, Esq Declaration w Exhibits A -I.pdf(286924 bytes) Vallin Declaration w Exhibits A to B.pdf(1242507 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CARINA WOOD,)	Registration No.1972338
)	
)	Cancellation No. 92058279
Petitioner,)	
)	
v.)	
)	
BO VALLIN,)	
)	
)	
)	
Registrant.)	

MOTION TO VACATE DEFAULT JUDGMENT ON CONSENT

Registrant, Bo Vallin (“Registrant”), by and through his undersigned counsel, hereby respectfully moves pursuant to Fed.R.Civ.P. 60(b)(1) to vacate the default judgment entered by the Board on May 8, 2014. Registrant also hereby moves for reinstatement of his U.S. Trademark Reg. No. 1,972,338, and for an Order resetting all discovery and trial dates in this cancellation proceeding. This motion is made on consent.

As discussed in greater detail below, the grounds for this motion are that: (1) this motion is made on Petitioner’s consent; (2) despite giving Registrant a 30-day period during which to show cause why default should not be granted, the Board nonetheless entered default during the 30-day period; and (3) during the period of time between the entry of default and the filing of this motion, the parties engaged in and completed substantial negotiations to fully resolve all disputed issues concerning this cancellation proceeding and Registrant’s opposition to Petitioner’s pending trademark application Ser. No. 85842564.

RELEVANT FACTS

1. On October 3, 1994 Registrant filed a trademark application seeking registration of the service mark SCANDINAVIAN (and design) in connection with “mail order services and retail sporting goods store services featuring athletic equipment and accessories, namely bicycles, motorcycles, scuba diving gear, weight lifting equipment, exercise equipment, gymnastic equipment, athletic wearing apparel, outerwear, swimwear, rainwear, gloves, mitts and footwear, sporting accessories, namely ski and swim goggles, sunglasses, bags and cases for carrying sporting equipment” in Class 042. Registrant claimed a date of first use of commerce of January 20, 1955. The application was assigned Appln. Ser. No. 74581205 (“the ‘205 Appln.’”). The ‘205 Appln. was granted registration on May 7, 1996 and issued under U.S. Trademark Reg. No. 1,972,338 (“the ‘338 Registration”). *See* Declaration of Bo Vallin, ¶3-4 (hereinafter, “Vallin Dec., ¶__”).

2. In the Combined Declaration and Power of Attorney filed with the ‘205 Appln., Registrant identified his residence address as 162 West 56th Street, Apt. 1403, New York, NY 10019 and his office and place of business as 40 West 57th Street, New York, NY 10019. *See* Vallin Dec., ¶5 and Ex. A. The correspondence address for his attorney was identified as Robert C. Faber, Esq., Ostrokenk, Faber, Gerb & Soffen, 1180 Avenue of the Americas, New York, NY 10036-8403. *Id.* Although Registrant’s office and place of business has changed since the date of issuance of the ‘338 Registration, his residence has remained the same, as has the correspondence address of his former attorney. *Id.*

3. The file history of the ‘338 Registration indicates that throughout its pendency all communications to and from the USPTO were addressed to Registrant’s attorney, including an

Office Action mailed on March 24, 1995, an Examiner's Amendment mailed on November 3, 1995, and a Notice of Publication mailed on Jan 16, 1996.

4. The file history of the '338 Registration also indicates that on October 25, 2002, Registrant filed with the USPTO a "Combined Affidavit Under §§ 8 & 15, With Declaration", attesting to continued use of the registered mark on all services in classes 37, 41 and 42 which are stated in the registration, except for the services in class 35.

5. The file history of the '338 Registration further indicates that on May 8, 2006, Registrant filed a Combined Declaration of Use (§8) and an Application for Renewal (§9) of the '338 Registration. The renewal application identified that Registrant had a new business address located at 16 East 55th Street, New York. New York 10022. *See* Declaration of Registrant, Bo Vallin, Ex. A ("hereinafter, "Vallin Dec., Ex. ____").

6. On November 22, 2013, Petitioner filed a Petition for Cancellation seeking cancellation of Registrant's '338 Registration on the ground of abandonment. *See* Declaration of Bruce D. Katz, Esq., Ex. B ("hereinafter, "Katz Dec., Ex. ____").

7. At ¶3, the Petition for Cancellation states that on February 6, 2013, Petitioner filed an application for registration of the mark THE SCANDINAVIAN COMPANY for "Retail store services featuring a wide variety of consumer goods of others." The application was assigned Appln. Ser. No. 85842564.

8. At ¶4, the Petition for Cancellation states that on May 23, 2013, the United States Patent and Trademark Office issued an Office Action in connection with Petitioner's Appln. Ser. No. 85842564 stating that Registration of the applied-for mark is refused, *inter alia*, because of a likelihood of confusion with Registrant's '338 Registration.

9. At ¶7, the Petition for Cancellation states that:

Upon information and belief, Registrant is not currently using, and has not used for at least the past two years, and possibly longer, the SCANDINAVIAN (and design) mark as a trademark designating the source of “mail order services and retail sporting goods store services featuring athletic equipment and accessories, namely bicycles, motorcycles, scuba diving gear, weight lifting equipment, exercise equipment, gymnastic equipment, athletic wearing apparel, outerwear, swimwear, rainwear, gloves, mitts and footwear, sporting accessories, namely ski and swim goggles, sunglasses, bags and cases for carrying sporting equipment” in Class 042.

10. As stated in the Vallin Dec., Registrant has not abandoned his mark. Instead, the mark is in current use. The certificate of service attached to the Petition for Cancellation states that the petition was served by mail at Registrant’s place of business identified in the ‘205 Application (40 East 57th Street, New York, New York 10019). Notably, however, the Petition for Cancellation was not served on Registrant at his place of business identified in his renewal application (16 East 55th Street, New York. New York 10022). Nor was the Petition for Cancellation served on Registrant’s attorney identified in the ‘205 Appln., the ‘338 Registration, or renewal application.

11. On November 25, 2013, a notice of the cancellation proceeding was mailed by the Board (Rochelle Adams, paralegal specialist). *See* Katz Dec., Ex. C. However, the Notice was mailed to Registrant at 40 East 57th Street, New York, New York and not to Registrant’s business address identified in his renewal application. Nor was it mailed to Registrant at his residence address. The Board’s records indicate that the November 25, 2013 notice was returned to the Board by the U.S. Postal Service as being undeliverable. *See* Katz Dec., Ex. A, Docket Entries 4-5.

12. On January 30, 2014, a Notice of Default was mailed by the Board to the address identified in Registrant’s renewal application - 16 East 55th Street, New York, New York.

Significantly, at that time Registrant was not in default for failing to answer the Petition for Cancellation because the Petition and the Board's November 25, 2013 Notice were not served at Registrant's current place of business identified in his renewal application. The Notice of Default gave Registrant 40 days to show cause why a default judgment should not be entered. *See* Katz Dec., Ex. D. Unfortunately, Registrant did not receive a copy of the January 30, 2014 Notice of Default as served by the Board because his place of business at 16 East 55th Street, New York, New York, had closed in October 2007. *See* Vallin Dec., ¶6. The Board's records indicate that the January 30, 2014 notice was returned to the Board by the U.S. Postal Service as being undeliverable.

13. On March 27, 2014, a Second Notice was mailed by the Board (Veronica P. White, Paralegal Specialist). *See* Katz Dec., Ex. E. The Second Notice gave Registrant 30 days to show cause why a default judgment should not be entered. The Second Notice was also returned to the Board as undeliverable. *See* Katz Dec., Ex. A, Docket Entry 9. Nonetheless, Registrant learned of the cancellation proceeding during a routine online web search on April 3, 2014. *See* Vallin Dec., ¶10. Registrant contacted the undersigned on April 14, 2014 to request assistance. *Id.*

14. On April 25, 2014 the undersigned telephoned Paralegal Specialist, Veronica White, at the Trademark Office to advise that Registrant did not intend to default and would timely respond to the Second Notice on the April 26, 2014 deadline set forth therein. *See* Katz Dec., ¶10. During that telephone call, the undersigned was advised that Ms. White was unavailable and was directed to a Representative who identified himself as Dwayne. *Id.* During that telephone conversation, the undersigned was advised by Mr. Dwayne that a Third Notice had been mailed on April 23, 2014 giving Registrant an additional 30-days - up to and including

May 23, 2014 - to show cause why a default should not be entered. *Id.* The undersigned was also advised that no further action would be taken by the Board prior to May 23, 2014. *Id.* The undersigned was provided with a contact receipt number for the call (1-304691849). *Id.*

15. The undersigned reasonably relied on the April 25, 2014 telephone conference with the Board in concluding that the Board would take no further action (and most certainly not enter default judgment) any time before May 23, 2014.

16. On May 20, 2014, while preparing to file Registrant's response to the Order to Show Cause and an answer to the Petition for Cancellation, the undersigned learned that the Board had issued an Order of default on May 8, 2014 and further learned that Registrant's trademark was cancelled on May 16, 2014 – despite the 30-day period granted by the April 23, 2014 Notice.

17. Stated otherwise, despite the fact that the April 23, 2014 notice granted Registrant a 30-day period (up to and including May 23, 2014) to show cause why default should not be granted, the Board nonetheless granted default on May 8, 2014.

18. Briefly after the default judgment was entered, Petitioner's counsel was asked to advise the Trademark Office as to the status of this proceeding during prosecution of Petitioner's Trademark Appln. Ser. No. 85842564. *See* Katz Dec., ¶13. In response, Petitioner's counsel advised that this proceeding was terminated. Unfortunately, although that statement was true, it apparently lead the Examining Attorney to understand that Registrant was not seeking to vacate the default. Consequently, the Examining Attorney passed Petitioner's application to publication, which created another dispute between the parties as to the registrability of Petitioner's application. In other words, Petitioner's application was allowed based on the default, resulting in the need for Registrant to commence and otherwise-unnecessary opposition proceeding.

19. Registrant has not ignored the entry of default in this proceeding but has instead focused on resolving all disputes between the parties so that this motion could be made on consent. That necessitated satisfying Petitioner's insistence on evidence of ongoing use of Registrant's mark, and back-and-forth negotiations over the terms of a consent agreement. Since entry of the default judgment on May 20, 2014, the parties have been engaged in ongoing settlement discussions in an effort to resolve all disputes between Registrant and Petitioner. *See* Katz Dec., ¶14. Those discussions took substantial time due to the need to separately counsel Registrant and Petitioner throughout the settlement discussions. *Id.* However, as a result of the settlement discussions, which lasted over four months, the parties have resolved all disputes between them. *Id.* First, the parties have agreed to vacatur of the default judgment entered prematurely by the Board in this proceeding and resulting in cancellation of Registrant's trademark. *Id.* Second, the parties have entered into a consent agreement with specific provisions limiting the use of their respective marks and agreeing that, as so restricted, there is no likelihood of confusion between their marks. *Id.*

ARGUMENT

1. This Motion is on Consent.

As provided in TBMP 544, "[w]here the parties are agreed that the circumstances warrant the vacating or setting aside of a final judgment, a stipulation or consented motion for relief from the judgment should be filed. The Board ordinarily will grant a consented request for relief from judgment. Since this motion is made on Petitioner's consent, Registrant respectfully submits that the relief requested herein should be granted.

Since this motion is made with Petitioner's consent, Registrant respectfully requests an order vacating the default judgment entered by the Board on May 8, 2014, reinstating Registrant's '338 Registration, and resetting all discovery and trial dates in this proceeding.

2. Relief From Default is Warranted Even in the Absence of Consent.

A. Standard for Setting Aside a Default or Default Judgment.

Relief from default is warranted even in the absence of Petitioner's consent. The Board has the power to set aside the entry of default "for good cause shown," TBMP 312.02; Fed R. Civ. P. 55(b), or to set aside a default judgment for various reasons including mistake, inadvertence, or excusable neglect. TBMP 312.03; Fed. R. Civ. P. 60(b)(1). Under Fed.R.Civ.P. 60(c)(1), a motion to vacate must be filed within one year from entry of judgment. Thus, this motion is timely. As discussed above, during the time period since entry of default in this proceeding, the parties have engaged in substantial ongoing settlement discussions and have resolved all issues concerning this proceeding and a potential opposition proceeding concerning Petitioner's pending trademark application Serial No. 85842564.

Firstly, as discussed above, default was entered on May 8, 2014 despite the issuance of an April 23, 2014 Notice giving Registrant 30 days to show cause. Thus, Registrant respectfully submits that the entry of default was an inadvertent error correctable under Rule 60. *See, e.g., Brown v. U.S.*, 80 Fed.Appx. 676, 678 (Fed. Cir. 2003) ("[u]nder Rule 60(b)(1), relief may be granted from 'judicial error' ").

Further, in the context of a default judgment entered for failure to timely answer an *inter partes* petition, "a showing of lack of culpability sufficient to meet the Rule 55(c) 'good cause' standard is usually sufficient to demonstrate the excusable neglect or mistake criteria of Rule 60(b)(1)." *Info. Sys. & Networks Corp.*, 994 F.2d 792, 796 (Fed. Cir. 1993).

In *Info. Sys.*, the Federal Circuit adopted a standard for relief from a default judgment. A default judgment should be set aside where the failure to timely file a responsive pleading is not due to a “willful disregard for the court’s rules and procedures.” *Id.* As stated by the Federal Circuit in *Info. Sys.*:

We conclude that the trial court abused its discretion in determining that ISN’s failure to file an answer constituted culpable conduct. Under the standard of culpability we have adopted, the undisputed facts do not establish a willful disregard for the court’s rules and procedures, merely negligence. 994 F.2d at 796.

The factors considered in determining a motion to set aside notice of default are also considered in determining a motion for relief from a default judgment entered pursuant to Fed. R. Civ. P. 55. *See* TBMP 312.03. The factors to be considered in determining a motion to vacate a default judgment for failure to answer a petition are: (1) whether the plaintiff will be prejudiced, (2) whether the default was willful, and (3) whether the defendant has a meritorious defense to the action. *Id.*

Because default judgments for failure to timely answer an *inter partes* petition are not favored by the law, a motion under Fed. R. Civ. P. 55(c) or 60(b) seeking relief from such a judgment is treated with more liberality by the Board than are other motions under Fed. R. Civ. P. 60(b) for relief from other types of judgments such as default judgments entered against plaintiffs for failure to prosecute the case. *See* TBMP 312.03; *Info. Sys.*, 994 F.2d at 795 (“Rule 60(b) is applied most liberally to judgments in default”), quoting *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 403 (5th Cir. 1981); *Ruiz v. Quarterman*, 504 F.3d 523, 532 (5th Cir. 2007)

(“[T]his lesser standard of review has been applied most liberally to motions to re-open default judgments”).¹

Since provisions for relief from default judgments are remedial in nature, they must be liberally applied. Default judgments are disfavored and cases ordinarily should be decided on their merits. *In re Hammer*, 940 F.2d 524, 525 (9th Cir. 1991). Where a registrant seeks timely relief from a default judgment and has a meritorious defense, doubts should be resolved in favor of granting the motion to set aside the default judgment. *Direct Mail Specialists, Inc. v. Eclat Computerized Technologies, Inc.*, 840 F.2d 685 (9th Cir. 1988).

A registrant seeking to set aside a default judgment must generally show mistake, inadvertence, surprise or excusable neglect. *See* Fed. R. Civ. P. 60(b)(1). The same factors are considered in determining whether good cause exists to set aside entry of default. Fed. R. Civ. P. 55(c); *Chrysler Credit Corp. v. Macino*, 710 F.2d 363, 368 (7th Cir. 1983); *Waifersong, Ltd. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir. 1992).

To obtain relief based on mistake, a party must show that the mistake (of fact or law) relates to the registrant’s duty to respond to the petition. *Kingvision Pay-Per-View Ltd. v. Lake Alice Bar*, 168 F.3d 347, 350 (9th Cir. 1999). Thus, for example, relief will be granted where the registrant is under a mistaken belief as to the date on which he was required to respond to the petition, or believes that no response is required. *999 v. Cox & Co.*, 574 F.Supp. 1026, 1029 (D.

¹ *Cf. Djeredjian v. Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991) and *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154, 1155 (TTAB 1991) both of which involved default judgments for failure to answer, with *CTRL Systems Inc. v. Ultraphonics of North America Inc.*, 52 USPQ2d 1300, 1303 (TTAB 1999) (motion to set aside judgment denied since oppose is equally as accountable as its counsel for lack of attention to case). *See also Smart Inventions Inc. v. TMB Products LLC*, 81 USPQ2d 1383, 1384 (TTAB 2006) (cancellation respondent’s motion to set aside default judgment on ground that it never received actual or constructive notice of proceeding granted under Fed. R. Civ. P. 60(b)(4) where assignment of mark to respondent recorded before proceeding instituted but notification of proceeding sent to prior owner); 10A C.Wright, A. Miller & M. Kane, *Federal Practice and Procedure*, Civil 3d §2693 (2012).

Mo. 1983); *Williams v. Campbell*, 96 F.R.D. 547 (E.D. Tenn. 1982); *Newhouse v. Probert*, 608 F.Supp. 978, 985 (W.D. Mich. 1985); *Brown v. Boats Unlimited, Inc.*, 128 F.R.D. 23, 24 (D. R.I. 1989). Relief may also be granted where a registrant is reasonably mistaken as to his duty to respond to the petition, after he is served with it. *Newhouse*, at 985; *Brien v. Kullman Industries, Inc.*, 71 F.3d 1073, 1078 (2d Cir. 1995); *Wayland v. Dist. Ct.*, 104 F.R.D. 91, 92 (D. Me. 2985).

Also, the meaning of “excusable neglect” sufficient to warrant setting aside entry of default or default judgment also encompasses “surprise” and “inadvertence.” The issue is whether the moving party has shown a reasonable excuse for the default. *Meadows v. Dominican Republic*, 817 F.2d 517, 520 (9th Cir. 1987).

The question is whether for purposes of Rule 60(b), “excusable neglect” encompasses situations where a filing deadline is missed due to negligence. *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 394 (1993). In the context of a default for failing to answer a petition in an *inter partes* proceeding, the Federal Circuit has unequivocally held that a default judgment should be set aside where a failure to answer an *inter partes* petition was not the result of a “willful disregard for the court’s rules and procedures.” *Info. Sys.*, 994 F.2d at 796. As demonstrated above, Registrant’s failure to answer the Petition for Cancellation was not due to a willful disregard for the Board’s rules and procedures. Accordingly, Registrant respectfully submits that the default judgment entered herein should be vacated.

Relief is warranted even under the standard applied outside the context of a failure to timely answer a petition for cancellation. There, the question of whether neglect is “excusable” is an equitable determination that takes into account all relevant circumstances surrounding the omission, including: the danger of prejudice to plaintiff, lack of a meritorious defense, and

culpable conduct by the party causing the default. Rutter, Fed. Civ. Pro. Before Trial, ¶6:165.7 (citing *Pioneer*, 507 U.S. at 395, and *Stutson v. United States*, 516 U.S. 193, 195-196 (1996)) (*Pioneer*'s formulation of "excusable neglect" applicable in non-bankruptcy contexts. No single factor is determinative as to whether relief from default should be granted. Rather, all relevant factors should be balanced in determining whether a party is deserving of the harsh sanction of a default judgment).

Although the court of appeals reviews a decision to deny a motion to set aside a default judgment for an abuse of discretion, due to the policy of favoring judgments on the merits, a glaring abuse of discretion is not required for reversal of a refusal to relieve a party of the harsh sanction of default. *U.S. v. \$22,050.00 U.S. Currency*, 595 F.3d 318 (6th Cir. 2010). Even a slight abuse of discretion justifies reversal. *Johnson v. Dayton Elec. Mfg. Co.*, 140 F.3d 781 (8th Cir. 1998). Thus, in *Bieganek v. Taylor*, 801 F.2d 879 (7th Cir. 1986), the Seventh Circuit held that a district court abused its discretion in declining to set aside a default entered against a defendant where there was no evidence of willful defiance by defendant.

In addition to excusable neglect, a party seeking relief from default must show a meritorious defense. *Jones v. Phipps*, 39 F.3d 158, 165 (7th Cir. 1994); *Williams v. Meyer*, 346 F.3d 607, 614 (6th Cir. 2003); *Franchise Holding II, LLC v. Huntington Restaurants Group, Inc.*, 375 F.3d 922, 926 (9th Cir. 2004) (litigant must present "specific facts that would constitute a defense"). The movant need not show that it will prevail, just that there is a *bona fide* chance that it will prevail. *Hritz v. Woma Corp.*, 732 F.2d 1178, 1181 (3d Cir. 1984); *Jones*, at 165. The standard is not a likelihood of success; a movant need only show that the defense allegations, if proven, would constitute a complete defense. *Securities & Exchange Comm'n v. McNulty*, 137 F.3d 732, 740 (2d Cir. 1998).

B. Relief From Default is Appropriate Here.

All of the foregoing considerations weigh in favor of Registrant. First, Registrant took timely action well within a year after entry of default as required by Fed. R. Civ. P. 60(b). Next, as stated in his declaration, Registrant was unaware of the cancellation proceeding because neither the Petition for Cancellation nor the Notice of the proceeding were served on his then-current business address on record with the Trademark Office. At the time of service, Registrant's change in business address, although reflected in his renewal application filed on May 8, 2006, was not similarly noted in Trademark Office records. Further, Registrant's residence address has been of record and has not changed since his initial trademark application was filed. No efforts were made to serve Registrant at his residence address. Nonetheless, Registrant diligently checked the status of his registration periodically online and, on April 3, 2014, Registrant learned that a petition for cancellation had been served at his former business address, taking timely action to address the notice of default leading to this motion.

Further, in addition to excusable neglect, Registrant maintains meritorious defenses against allegations of abandonment - the sole ground for cancellation set forth in the Petition for Cancellation. *Securities & Exchange Comm'n*, at 740. This includes, but is not limited to, declaration testimony supported by photographic evidence showing contemporaneous use of the Registrant's mark and establishing that there is no merit to Petitioner's allegations of abandonment.

The danger of prejudice to Petitioner by granting Registrant's motion is nonexistent or otherwise exceedingly minimal. Allowing Registrant to appear in this action would merely force Petitioner to prove its claim of abandonment, which Registrant has denied. Default was entered on May 8, 2014, and accordingly the delay and potential impact to this action are minimal.

Registrant did not engage in culpable conduct. Taking all relevant circumstances into account, Registrant's neglect is clearly "excusable," and Registrant has good cause to set aside the default. *Pioneer Investment Servs. Co.*, 507 U.S. at 395. Furthermore, there can be no prejudice where Petitioner has consented to the relief sought by this motion.

C. Merits of Registrant's Proposed Defense.

In presenting a meritorious defense, the registrant need not show he will prevail, only that there is a bona fide chance that such a result will occur. *Hritz*, 732 F.2d at 1181. Again, the standard is not a likelihood of success. Rather, a registrant need only show that the defense allegations, if proven, would constitute a complete defense. *Securities & Exchange Comm'n*, 137 F.3d at 740.

Registrant maintains a complete defense against Petitioner's claim of abandonment, which includes continuous use of the registered mark. Although Petitioner alleges that the registered mark was not in use for at least the past two years, Registrant has established that the mark has been in consistent use throughout that time connection with services described in the registration at outlet stores located throughout New York; and that Registrant has no intent to abandon the mark. The facts concerning Registrants use of the mark with no intent to abandon are more fully described in the accompanying Vallin Declaration.

D. Petitioner Will Not be Prejudiced by Vacatur of the Default.

"There is no prejudice to the plaintiff where the setting aside of the default has done no harm to plaintiff except to require it to prove its case." *Lacy v. Sitel Corp.*, 227 F.3d 290, 293 (5th Cir. 2000); *TCI Group Life Ins. Plan*, at 701. To establish prejudice, the petitioner must be able to show that the delay in responding to the lawsuit resulted in the loss of evidence, increased the difficulty of discovery, or thwarted petitioner's ability to obtain relief. *Cutting v. Town of*

Allenstown, 936 F.2d 18, 22 (1st Cir. 1991) (plaintiff died in the interim); *Northwestern Mut. Life Ins. Co. v. DeMalleray*, 789 F.Supp. 651, 654 (S.D.N.Y. 1992) (loss of records in interim); *Whelan v. Abell*, 48 F.3d 1247 (D.C. Cir. 1995) (trial completed against other defendants).

That Petitioner may have incurred costs and other expenses will not constitute sufficient prejudice to Petitioner to justify denying relief from default. *Interior Finish Contractor's Ass'n v. Drywall Finishers Local Union*, 625 F.Supp. 1233, 1239 (E.D. Pa. 1985). Nor will delay by itself be sufficient to establish prejudice to Petitioner, especially where the delay is minor and where Registrant shows a meritorious defense. *Lacy*, at 293; *Gross v. Stereo Component Systems, Inc.*, 700 F.2d 122-123 (3d Cir. 1983).

Here, there is no prejudice to Petitioner by setting aside the entry of default and permitting the adjudication of the parties' claims. Petitioner fails to otherwise support its prejudice, e.g., that the length of the delay impacted the proceedings, resulted in the loss of evidence, increased the difficulty of discovery, or thwarted its ability to obtain relief. No such factors exist, and, as such, no prejudice has resulted to Petitioner. Accordingly, Registrant respectfully requests that the Court grant this motion.

E. Default Was Not The Result of Culpable Conduct by Registrant.

Relief from default will also be denied where the default resulted from registrant's "culpable conduct." *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984). This is so because a registrant should not be able to cause the default and then later seek relief from it. *Meadows*, at 521-522. "Culpable" means inexcusable.

In connection with *inter partes* proceedings before this Board, the level of culpable conduct necessary to be deemed "inexcusable" is limited to instances where a party's default is the result of a "willful disregard for the court's rules and procedures". *Info. Sys.*, 994 F.2d at 796.

Relief from default is generally denied only where a defaulting party's neglect is inexcusable. *Gross v. Stereo Component Systems, Inc.*, 700 F.2d 120, 123-124 (3rd Cir. 1983). Most courts require evidence that a registrant's failure to respond was "willful, deliberate, or evidence of bad faith." *American Alliance Ins. Co., Ltd. v. Eagle Ins. Co.*, 92 F.3d 57, 60-61 (2nd Cir. 1996) (something more than mere negligence required). A request for relief is properly granted where there is a good faith explanation that negates any intention to take advantage of the opposing party, interfere with judicial decision making, or otherwise manipulate the legal process. *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697 (9th Cir. 2001).

Registrant's neglect in this matter was neither "inexcusable" nor "culpable." Registrant's failure to respond was not willful or in bad faith. It was merely the inadvertent result of relying on the thirty-day period set forth in the April 23 Order. Registrant did not attempt to take advantage of Petitioner, who is represented by counsel, and certainly did not attempt to manipulate the legal process. Registrant respectfully submits that the Board erred in entering default judgment after having given Registrant thirty days to respond – in writing – in the April 23, 2014 Order and after having advise Registrant's attorney during an April 25, 2014 telephone inquiry that no further action would be taken by the Board during that thirty-day period. Registrant was simply not aware that the Board would (or legally could) enter judgment by default during that thirty-day period. However, once Registrant became aware, Registrant took steps to vacate the default - leading to the filing of this motion to vacate. With no evidence of bad faith, Registrant should not be found to have engaged in culpable conduct.

CONCLUSION

For all of the foregoing reasons, Registrant respectfully requests that the Board vacate the default judgment and permit him to file and serve the [Proposed] Answer attached hereto, to

extend the trial and discovery schedule, and to permit Registrant to defend this case on the merits. Registrant further respectfully requests reinstatement of his U.S. Trademark Reg. No. 1,972,338.

Dated: November 25, 2014

Respectfully submitted,

/BDK/

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PROPOSED ANSWER TO PETITION FOR CANCELLATION

Bo Vallin, an individual having an address at 152 West 56th Street, Apt. 1403 New York, NY 10019 , ("Registrant"), answers the Petition for Cancellation of U.S. Registration No. 1972338 for the mark SCANDINAVIAN (and design) in Class 042. In support of his answer Registrant states as follows:

1. Registrant denies each and every allegation set forth in paragraph 1 of the petition, but admits that Bo Vallin is the current owner of the registration at issue in this cancellation proceeding.
2. In response to paragraph 2 of the petition, Registrant refers to the records of the U.S.P.T.O. for the particulars of the U.S.P.T.O. filings and actions referred to in paragraph 2 of the Petition to Cancel.
3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3, 4, and 5 of the Petition for Cancellation and therefore denies such allegations.

COUNT I

4. In response to paragraph "6" the Petition for Cancellation, Registrant repeats, realleges and reaffirms the responses to paragraphs "1" through "5" as if fully set forth herein.
5. Registrant denies the allegations contained in paragraph 7 of the Petition for Cancellation.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. The petition fails to state a claim for which relief can be granted. Petitioner fails to allege facts sufficient to demonstrate Registrant's nonuse with intent not to resume such use, nor has petitioner alleged facts sufficient to establish a presumption of abandonment. 15 U.S.C. § 1127

WHEREFORE, Registrant prays that the Petition for Cancellation be dismissed.

Respectfully submitted,

Bo Vallin

By his Attorneys



Bruce D. Katz, Esq.
Bruce D. Katz, Esq. (BK 2041)
Law Offices of Bruce D. Katz and Assoc.
160 Broadway, Suite 908
New York, New York 10038
Telephone: (212)233-3434
Bkatz225@gmail.com

CERTIFICATE OF SERVICE

The undersigned certifies that the MOTION TO VACATE DEFAULT JUDGMENT, PROPOSED ANSWER, DECLARATION OF BRUCE D. KATZ, ESQ. with Exhibits thereto, and DECLARATION OF REGISTRANT BO VALLIN with Exhibits thereto is being submitted electronically through the Trademark Trial and Appeal Board ESTTA System on this November 25, 2014.

/s/ Bruce D. Katz
Bruce D. Katz, Esq.
Bruce D. Katz & Associates
160 Broadway, Suite 908
New York, NY 10038
(212)233-3434
Bkatz225@gmail.com
Attorney for Registrant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK AND APPEAL BOARD

CARINA WOOD,)	Registration No.1972338
)	
)	Cancellation No. 92058279
Petitioner,)	
)	
v.)	
)	
BO VALLIN,)	
)	
)	
Registrant.)	

DECLARATION OF BRUCE D. KATZ, ESQ.

1. I Bruce D. Katz, Esq., am counsel for registrant Bo Vallin in the above-matter. I submit this declaration in support of Registrant's motion to

2. Annexed hereto as **Exhibit A** is a true and correct copy of the docket of TTAB cancellation proceeding No. 92058279, as downloaded from the TTABVUE system.

3. Annexed hereto as **Exhibit B** is a true and correct copy of the November 22, 2013 Petition for Cancellation filed with the Board, as downloaded from the TTABVUE system.

4. Annexed hereto as **Exhibit C** is a true and correct copy of the Board's November 25, 2013 Notice of the filing of a petition to cancel with trial dates, as downloaded from the TTABVUE system.

5. Annexed hereto as **Exhibit D** is a true and correct copy of the Board's January 20, 2014 Notice that mail forwarded to registrant was returned by the Postal Service as undeliverable, as downloaded from the TTABVUE system.

6. Annexed hereto as **Exhibit E** is a true and correct copy of the Board's March 27, 2014 notice of default, as downloaded from the TTABVUE system.

7. Annexed hereto as **Exhibit F** is a true and correct copy of the Board's April 23, 2014 Notice providing respondent until May 23, 2014 to show cause why judgment by default should not be entered, as downloaded from the TTABVUE system.

8. Annexed hereto as **Exhibit G** is a true and correct copy of the Board's May 8, 2014 decision entering judgment by default against Registrant, as downloaded from the TTABVUE system.

9. Annexed hereto as **Exhibit H** is a true and correct copy of the May 16, 2014 order canceling Registration No. 1,972,338 with respect to International Class 42, as downloaded from the TTABVUE system.

10. I was not retained to represent Registrant in the above-captioned proceeding until April 21, 2014. In view of the outstanding notice of default sent on March 27, 2014, and to prevent any inadvertent default judgment, on April 25, 2014, I telephoned Paralegal Specialist, Veronica White, at the TTAB to advise that Registrant did not intend to default and would timely respond to the Second Notice the following day - on April 26, 2014. However, I was advised that Ms. White was unavailable. I was directed to a Representative who identified himself as Dwayne. During my telephone conversation with Mr. Dwayne, I was advised by Mr. Dwayne that a Third Notice had been mailed by the Board on April 23, 2014, giving Registrant 30-days up to and including May 23, 2014 to show cause why a default should not be entered. A contact receipt number was provided (1-304691849). I was advised by Mr. Dwayne - and understood that the new Notice dated May 23, 2014 clearly indicated - that the Trademark Office would take no further action (and most certainly not enter default judgment) before May 23, 2014. I reasonably relied on the April 25, 2014 telephone conference with the Board in concluding that the Board would take no further action (and most certainly not enter default judgment) any time before May 23, 2014.

11. On May 20, 2014, while preparing to file a brief response to the Order to Show Cause and answer to the Petition for Cancellation on behalf of Registrant, I learned that the Board prematurely issued an order of default on May 8, 2014 and that Registrant's trademark was cancelled on May 16, 2014. This occurred *despite* the fact that the April 23, 2014 Notice explicitly gave Registrant 30 days (up to and including May 23, 2014) to respond.

12. Registrant's failure to timely answer the Petition for Cancellation or to respond to the Notices mailed by the Board were neither willful nor reckless. First, the Petition for Cancellation and the Board's November 25, 2013 Notice of the cancellation proceeding were both mailed to the incorrect address. Although the address of Registrant's place of business was updated in his renewal application filed on May 8, 2006, his address was not updated in the records of the Trademark Office. The Board's January 30, 2014 Notice of Default was mailed to Registrant's place of business on record with the Trademark Office. However, Registrant was not technically in default at that time due to defective service of the Petition for Cancellation and November 25, 2013 Notice. Registrant's failure to respond to the March 27, 2014 Notice was not willful or reckless. Registrant's undersigned counsel contacted the Board to advise that a timely response would be filed to the March 27, 2014 Notice of Default. However, he was advised during that the Board had issued a second Notice on April 23, 2014 giving Registrant additional time to respond, and that no further action would be taken by the Board prior to the May 23, 2014 deadline set forth therein. Despite this, the Board entered default judgment on May 8, 2014 and cancelled Registrant's trademark registration on May 16, 2014.

13. Briefly after the default judgment was entered, Petitioner's counsel was asked to advise the Trademark Office as to the status of this proceeding. In response, Petitioner's counsel advised that this proceeding was terminated. Unfortunately, although that statement was true, it apparently lead the Examining Attorney to understand that Registrant was not seeking to vacate

the default. Consequently, the Examining Attorney passed Petitioner's application to publication, which created another dispute between the parties as to the registrability of Petitioner's application.

14. Since I learned of the default judgment on May 20, 2014, I have been engaged in ongoing settlement discussions with counsel for Petitioner in an effort to resolve all disputes between Registrant and Petitioner. Those discussions took substantial time due to the need to reach Registrant and Petitioner in an effort to counsel them in the settlement discussions. However, as a result of the settlement discussions, which lasted over four months, the parties have resolved all disputes between them. First, the parties have agreed to vacatur of the default judgment entered prematurely by the Board in this proceeding and resulting in cancellation of Registrant's trademark. Second, the parties have entered into a consent agreement with specific provisions limiting the use of their respective marks and agreeing that, as so restricted, there is no likelihood of confusion between their marks.

15. In view of the foregoing, Registrant respectfully submits that the default judgment should be vacated, and that his registration should be reinstated.

The undersigned being warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of this document, declares that all statements made of my own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: November 25, 2014
New York, New York

/BDK/
Bruce D. Katz, Esq.

EXHIBIT A

Search:

Cancellation

Number: 92058279

Status: Terminated

General Contact Number: 571-272-8500

Interlocutory Attorney: [JENNIFER KRISP](#)

Filing Date: 11/22/2013

Status Date: 05/16/2014

Defendant

Name: [Bo Vallin dba Scandinavian Ski & Sport Shops](#)

Correspondence: [BO VALLIN](#)

SCANDINAVIAN SKI & SPORT SHOPS
16 EAST 55TH STREET
NEW YORK, NY 10022
UNITED STATES

Serial #: [74581205](#)

[Application File](#)

Application Status: Cancelled - Section 18

Mark: SCANDINAVIAN

Registration #: [1972338](#)

Plaintiff

Name: [Carina Wood](#)

Correspondence: [LUKE BREAN](#)

BREANLAW LLC
PO BOX 4120 , ECM #72065
PORTLAND, OR 97208
UNITED STATES
luke@breanlaw.com

Prosecution History

#	Date	History Text	Due Date
14	05/16/2014	TERMINATED	
13	05/16/2014	COMMR ORDER CANCELLING REG	
12	05/08/2014	BD DECISION: GRANTED	
11	05/05/2014	D UNDELIVERABLE MAIL	
10	05/05/2014	D UNDELIVERABLE MAIL	
9	04/23/2014	RESPONSE DUE 30 DAYS (DUE DATE)	05/23/2014
8	04/10/2014	D UNDELIVERABLE MAIL	

<u>7</u>	03/27/2014	<u>NOTICE OF DEFAULT</u>	
<u>6</u>	01/30/2014	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	03/11/2014
<u>5</u>	12/09/2013	<u>D UNDELIVERABLE MAIL</u>	
<u>4</u>	11/27/2013	<u>UNDELIVERABLE MAIL</u>	
<u>3</u>	11/25/2013	PENDING, INSTITUTED	
<u>2</u>	11/25/2013	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	01/04/2014
<u>1</u>	11/22/2013	<u>FILED AND FEE</u>	

Results as of 05/21/2014 11:08 AM

Search:

EXHIBIT B

ESTTA Tracking number: **ESTTA572682**

Filing date: **11/22/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Carina Wood		
Entity	Individual	Citizenship	UNITED STATES
Address	1000 Stinson Way STE 103 West Palm Beach, FL 33411 UNITED STATES		

Attorney information	LUKE BREAN BREANLAW, LLC P.O. Box 4120, ECM #72065 PORTLAND, OR 97211 UNITED STATES luke@breanlaw.com Phone:800-451-5815
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Registration Subject to Cancellation

Registration No	1972338	Registration date	05/07/1996
Registrant	VALLIN, BO 40 West 57th Street New York, NY 10019 USX		

Goods/Services Subject to Cancellation

Class 042. First Use: 1955/01/20 First Use In Commerce: 1955/01/20 All goods and services in the class are cancelled, namely: mail order services and retail sportinggoods store services featuring athletic equipment and accessories, namely bicycles, motorcycles, scuba diving gear, weight lifting equipment, exercise equipment, gymnastic equipment, athletic wearing apparel, outerwear, swimwear, rainwear, gloves, mitts and footwear, sporting accessories, namely ski and swim goggles, sunglasses, bags and cases for carrying sporting equipment

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	SCANDINAVIAN.pdf(87662 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/LB/
Name	LUKE BREAN
Date	11/22/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 1972338

Carina Wood

Petitioner,

v.

Bo Vallin

Respondent.

PETITION TO CANCEL

Carina Wood, an individual having an address at 1000 Stinson Way STE 103, West Palm Beach, Florida 33411 (“Petitioner”), believes she will be damaged by Bo Vallin’s (“Respondent”) U.S. Registration No. 1972338 for the mark SCANDINAVIAN (and design) in Class 042, for, “mail order services and retail sporting goods store services featuring athletic equipment and accessories, namely bicycles, motorcycles, scuba diving gear, weight lifting equipment, exercise equipment, gymnastic equipment, athletic wearing apparel, outerwear, swimwear, rainwear, gloves, mitts and footwear, sporting accessories, namely ski and swim goggles, sunglasses, bags and cases for carrying sporting equipment” and hereby petitions to cancel the registration of said mark. In support thereof the petitioner states as follows:

1. Upon information and belief, the name of the current owner of the registration is Bo Vallin, an individual with an address of 40 West 57th Street, New York, NY 10019, United States (“Respondent”).
2. On October 3, 1994 Respondent filed a trademark application seeking registration for the mark SCANDINAVIAN (and design) in connection with “mail order services and retail sporting goods store services featuring athletic equipment and accessories, namely bicycles, motorcycles, scuba diving gear, weight lifting equipment, exercise equipment, gymnastic equipment, athletic wearing apparel, outerwear, swimwear, rainwear, gloves, mitts and footwear, sporting accessories,

namely ski and swim goggles, sunglasses, bags and cases for carrying sporting equipment” in Class 042. The application was assigned Application Serial No. 74581205. Respondent's application was granted registration on May 7, 1996 and issued under Registration No. 1972338.

3. Petitioner filed an application for registration of the mark THE SCANDINAVIAN COMPANY on February 6, 2013 for “Retail store services featuring a wide variety of consumer goods of others.”

4. On May 23, 2013 the United States Patent and Trademark Office issued an Office Action in connection with Petitioner's Application Serial No. 85842564 stating, inter alia, Registration of the applied-for mark is refused because of a likelihood of confusion with U.S. Registration No. 1972338. Trademark Act Section 2(d), 15 U.S.C.A. § 1052(d); see TMEP §§ 1207.01 *et seq.*

5. Petitioner is being harmed by the Registration because the PTO Examining Attorney has refused the Application for registration.

COUNT I: MARK HAS BEEN ABANDONED

6. Petitioner repeats and incorporates herein by reference the averments in the preceding paragraphs.

7. Upon information and belief, Registrant is not currently using, and has not used for at least the past two years, and possibly longer, the SCANDINAVIAN (and design) mark as a trademark designating the source of “mail order services and retail sporting goods store services featuring athletic equipment and accessories, namely bicycles, motorcycles, scuba diving gear, weight lifting equipment, exercise equipment, gymnastic equipment, athletic wearing apparel, outerwear, swimwear, rainwear, gloves, mitts and footwear, sporting accessories, namely ski and swim goggles, sunglasses, bags and cases for carrying sporting equipment” in Class 042.

PRAYER FOR RELIEF

WHEREFORE, No. 1972338 be cancelled as it relates to the goods for which it is registered.

The filing fee of \$300 for this Petition to Cancel is being submitted electronically with this Notice.

Respectfully submitted,

Carina Wood

By her Attorneys
Luke Brean, Esq.

BreanLaw, LLC
P.O. Box 4120
ECM #72065
Portland, Oregon 97208
800-451-5815
luke@breanlaw.com

CERTIFICATE OF ELECTRONIC MAILING

I hereby certify that the foregoing PETITION TO CANCEL is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this November 22, 2013.

Luke Brean, Esq.

BreanLaw, LLC
P.O. Box 4120
ECM #72065
Portland, Oregon 97208

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITION TO CANCEL is being deposited with the U.S. Postal Service with sufficient postage as certified first-class mail this November 22, 2013 in an envelope addressed to the Registrant:

Bo Vallin
40 West 57th Street
New York, NY 10019

Luke Brean, Esq.

BreanLaw, LLC
P.O. Box 4120
ECM #72065
Portland, Oregon 97208

EXHIBIT C

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 25, 2013

Cancellation No. 92058279
Registration No. 1972338

BO VALLIN
DBA SCANDINAVIAN SKI & SPORT SHOPS
40 WEST 57TH STREET
NEW YORK, NY 10019

Carina Wood

v.

Bo Vallin dba Scandinavian
Ski & Sport Shops

LUKE BREAN
BREANLAW LLC
PO BOX 4120, ECM #72065
PORTLAND, OR 97208

Rochelle Adams, Paralegal Specialist:

A petition to cancel with respect to International class 42 only has been filed with respect to the above-identified registration. A service copy of the petition for cancellation was forwarded to registrant (defendant) by the petitioner (plaintiff). An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVue system: <http://ttabvue.uspto.gov/ttabvue/>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/trademarks/index.jsp>. The Board's main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers

information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVue system at the following web address: <http://ttabvue.uspto.gov/ttabvue/>.**

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

Time to Answer	1/4/2014
Deadline for Discovery Conference	2/3/2014
Discovery Opens	2/3/2014
Initial Disclosures Due	3/5/2014
Expert Disclosures Due	7/3/2014
Discovery Closes	8/2/2014
Plaintiff's Pretrial Disclosures	9/16/2014
Plaintiff's 30-day Trial Period Ends	10/31/2014
Defendant's Pretrial Disclosures	11/15/2014
Defendant's 30-day Trial Period Ends	12/30/2014
Plaintiff's Rebuttal Disclosures	1/14/2015
Plaintiff's 15-day Rebuttal Period Ends	2/13/2015

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a

more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/trademarks/process/appeal/guidelines/stdnagmnt.jsp>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to

participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

EXHIBIT D

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

HKS

Mailed: January 30, 2014

Cancellation No. 92058279

Carina Wood

v.

Bo Vallin dba Scandinavian
Ski & Sport Shops

Eric McWilliams, Supervisory Paralegal:

The notice instituting this proceeding and a copy of the petition to cancel were forwarded to registrant but were returned by the Postal Service as undeliverable.

**BO VALLIN DBA SCANDINAVIAN SKI & SPORT SHOPS
16 EAST 55TH STREET
NEW YORK, NEW YORK 10022**

Accordingly, the above notice, with enclosure, is remailed as indicated above.

Registrant is allowed until **FORTY DAYS** from the mailing date of this order in which to inform this Office of its correct address in order that all records may be amended. Compliance with Trademark Rule 2.193(b) and Trademark 2.119(a) is required.

If there has been any transfer of interest in the involved registration, registrant must so advise the Board and registrant must submit copies of the appropriate documents. See Section 10 of the Trademark Act and Patent and Trademark Rules 3.71 and 3.73.

In view of the circumstances, the time for filing an answer to the petition to cancel is extended to **FORTY DAYS** from the mailing date of this order. Notice is hereby given that unless the registrant listed herein, its assigns or legal representatives, shall enter an appearance, answer or other response to the petition within the time frame allowed, the cancellation may proceed as in the case of default.

In accordance with the Trademark Rules of Practice, conferencing, disclosure, discovery and testimony dates are set below. In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Time to Answer	3/11/2014
Deadline for Discovery Conference	4/10/2014
Discovery Opens	4/10/2014
Initial Disclosures Due	5/10/2014
Expert Disclosures Due	9/7/2014
Discovery Closes	10/7/2014
Plaintiff's Pretrial Disclosures	11/21/2014
Plaintiff's 30-day Trial Period Ends	1/5/2015
Defendant's Pretrial Disclosures	1/20/2015
Defendant's 30-day Trial Period Ends	3/6/2015
Plaintiff's Rebuttal Disclosures	3/21/2015
Plaintiff's 15-day Rebuttal Period Ends	4/20/2015

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

CC:

ROBERT C FABER
OSTROLENK FABER GERB & SOFFEEN LLP
1180 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8403

EXHIBIT E

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 27, 2014

Cancellation No. 92058279

Carina Wood

v.

Bo Vallin dba Scandinavian
Ski & Sport Shops

Veronica P. White, Paralegal Specialist:

Answer was due in this case on March 11, 2014.
Inasmuch as it appears that no answer has been filed, nor
has respondent filed a motion to extend its time to answer,
notice of default is hereby entered against respondent under
Fed. R. Civ. P. 55(a).

Respondent is allowed until **THIRTY (30) DAYS** from the
mailing date of this order to show cause why judgment by
default should not be entered against respondent in
accordance with Fed. R. Civ. P. 55(b).

EXHIBIT F

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: April 23, 2014

Cancellation No. 92058279

Carina Wood

v.

Bo Vallin dba Scandinavian Ski &
Sport Shops

Nicole Thier, Paralegal Specialist:

On January 30, 2014, the Board reset trial dates and mailed a copy of the petition to cancel to the respondent at the most current address of record for the respondent.

On March 27, 2014, the Board issued a notice of default for respondent's failure to file a timely answer. On April 10, 2014, the Board's notice of default was returned as undeliverable.

Inasmuch as the Board has conducted a thorough search and is unable to ascertain a new address, respondent is allowed until thirty days from the mailing date of this order to show cause why judgment by default should not be entered against applicant in accordance with Fed. R. Civ. P. 55(b)(2).¹

¹ During the search, the Board concluded that respondent Bo Vallin has closed Scandinavian Ski & Sport Shops.

EXHIBIT G

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

nmt

Mailed: May 8, 2014

Cancellation No. 92058279

Carina Wood

v.

Bo Vallin dba Scandinavian Ski &
Sport Shops

By the Trademark Trial and Appeal Board:

On April 23, 2014, the Board issued a notice of default to respondent because no answer had been filed.

No response to the notice of default has been filed.

Accordingly, judgment by default is hereby entered against respondent, the petition to cancel is granted, and Registration No. 1972338 will be cancelled with respect to Class 42 only in due course by the Commissioner for Trademarks. *See* Fed. R. Civ. P. 55(b), and Trademark Rule 2.114(a).

EXHIBIT H

nmt

U. S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Carina Wood

v.

Bo Vallin dba Scandinavian Ski & Sport Shops

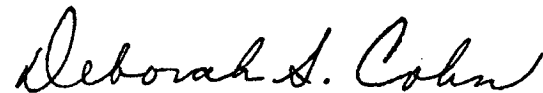
Cancellation No. 92058279

Luke Brean of BreanLaw LLC for Carina Wood.

Bo Vallin of Scandinavian Ski & Sport Shops, pro se.

The petition of Carina Wood having been granted on May 8, 2014,
Registration No. 1972338 is hereby cancelled with respect to International
Class 42.

MAY 16 2014



Deborah S. Cohn
Commissioner for Trademarks

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CARINA WOOD,)	Registration No.: 1,972,338
)	
)	Cancellation No.: 92058279
Petitioner,)	
)	
v.)	
)	
BO VALLIN,)	
)	
)	
Registrant.)	

**DECLARATION OF REGISTRANT, BO VALLIN,
IN SUPPORT OF MOTION TO VACATE DEFAULT JUDGMENT**

1. I, Bo Vallin, am the Registrant in the above-captioned cancellation proceeding. I submit this declaration in support of my motion pursuant to Fed.R.Civ.P. 60(b)(1) to vacate the default judgment entered by the Board on May 8, 2014 and to reinstate my U.S. Trademark Reg. No. 1,972,338, which was cancelled by Order of the Commissioner for Trademarks dated May 16, 2014. I have personal knowledge of all statements made herein.

2. As discussed in greater detail below, there is a reasonable excuse for my default in answering the petition for cancellation filed in this matter. My default in answering the petition in this proceeding was not intentional, but was a result of my failure to learn of the proceeding until after the time for filing an answer expired. As further discussed below, there is a meritorious defense to petitioner's allegations of abandonment - the sole ground for cancellation sought by petitioner - in that my service mark has not been abandoned, remains in active use in connection with the services identified in the registration, and I have no intention to abandon the service mark.

3. On October 3, 1994, I caused to be filed with the United States Patent and Trademark Office (“USPTO”) an application seeking registration of the service mark SCANDINAVIAN (and design) for “retail sporting goods store services featuring all sports athletic equipment, apparatus and accessories, as well as bicycles, motorcycles, scuba diving equipment, weight lifting, exercise and gymnastic equipment, athletic wearing apparel, outerwear, swimwear, rainwear, gloves, mitts and footwear, sports accessories, such as, ski and swim goggles, sunglasses, bags and cases for carrying sports equipment, repair services for athletic equipment and apparatus, ski and sports equipment and apparatus rental services, services of promoting the sales of all of the foregoing goods of others, in Class 42.” The application claimed a date of first use in commerce of January 20, 1955. The application was assigned Appln. Ser. No. 74/581,205 (“the ‘205 Appln.”).

4. After various revisions to the description of services, the ‘205 Appln. was granted registration on May 7, 1996 and issued under U.S. Trademark Reg. No. 1,972,338 (“the ‘338 Registration”).

5. The Combined Declaration and Power of Attorney filed with the ‘205 Appln. identified my residence address as 162 West 56 Street, Apt. 1403, New York, NY 10019. I still reside at the same residence identified in the ‘205 Appln. The Combined Declaration and Power of Attorney also identified my office and place of business as being located at 40 West 57 Street, New York, NY 10019.

6. On May 8, 2006, I caused to be filed a Combined Declaration of Use (§8) and an Application for Renewal (§9) of the ‘338 Registration. A copy thereof is attached hereto as **Exhibit A**. The renewal application identified a change in my place of business, to 16 East 55th Street, New York. New York 10022.

7. At all relevant times, I was the owner of SCANDINAVIAN, a well-known ski and sporting goods retail outlet with which the '338 Registration was used. From 1974 through 2004, SCANDINAVIAN was located at 40 West 57 Street, New York, New York 10019 ("the 57 Street location"). The Registered Mark was used continuously on and in connection with the 57 Street location since 1974. In 2004, SCANDINAVIAN was relocated to 16 East 55 Street, New York, New York 10022 ("the 55 Street location"). The change of address was noted in the renewal application for the SCANDINAVIAN mark filed on May 8, 2006. The 55 Street location was closed in October 2007. Although I notified my trademark counsel of the change in address, it was my understanding at the time that it was not necessary to update my correspondence address with the USPTO because neither my residence address nor the address of my trademark counsel changed.

8. Throughout its nearly sixty years of continuous operation, SCANDINAVIAN developed an enviable and valuable reputation as a retailer of "premium" goods of the types identified in the '338 Registration. The SCANDINAVIAN service mark has not been abandoned. The great recession and lack of snow accumulation in the Northeastern United States starting in or about 2007 and continuing through the winter of 2012-2013 led to a dramatic decrease in the demand for premium ski and winter sporting goods and related wearing apparel in the North Eastern United States – and an increase in demand for off-price goods of that nature.

9. To satisfy the increased demand for off-price goods and decreased demand for premium goods, it was necessary to alter the nature of SCANDINAVIAN's business on a temporary basis. Namely, starting in 2007 and continuing until the present date, the SCANDINAVIAN mark has been used in connection with ski and sporting goods sold at

discount prices in ski shop outlets. By offering the same goods at discount prices in the nature of an outlet store, SCANDINAVIAN is able to retain its reputation as a retailer of premium goods and avoid developing a reputation as a discount retailer.

10. Since 2007, the SCANDINAVIAN mark has been continuously used in connection with services described in the '338 Registration in the form of off-price ski and sporting goods outlet stores located throughout New York. The location of these outlet stores includes 655 Sixth Avenue New York, NY, 295 Madison Avenue, New York, NY, 121 West 36 Street, New York, NY, and 750 Stewart Avenue, Garden City, NY. However, in order to preserve the goodwill established over fifty years in SCANDINAVIAN name as a retailer of premium ski and sporting goods, the SCANDINAVIAN name has not been used as the name of those outlet stores. Instead, the SCANDINAVIAN name is used on labels attached to the goods, on shopping bags given to buyers at time of purchase, and on in-store displays to prominently identify SCANDINAVIAN as the supplier of the goods. Recent photographs taken in 2014 showing the aforesaid manner of use of the SCANDINAVIAN are annexed hereto as **Exhibit B**.

11. The default in this case was not intentional. I learned of the above-captioned cancellation proceeding during a routine status search of the '338 Registration on April 3, 2014 at the website "www.trademarkia.com." I personally conduct periodic status searches of my mark. When it came to my attention that a Petition for Cancellation of the '338 Registration had been filed by Petitioner, I contacted various trademark counsel for representation in the cancellation proceeding. On April 14, I telephoned Bruce Katz, Esq. and later meet and retained him on April 21, 2014.

12. The certificate of service attached to the Petition for Cancellation indicates that the Petition was served by mail by Petitioner's counsel on November 22, 2013 at the 57 Street

location. I did not receive a copy of the Petition as served by Petitioner's counsel. As noted above, the Renewal Application filed on May 8, 2006 included my new business address as the location of the 55 Street location. Thus, the Petition was not served at my place of business on file with the Trademark Office, as required by 37 CFR §§ 1.111 and 1.119.

13. Similarly, the November 25, 2013 Notice issued by the Board was also sent to the 57 Street location rather than my business address on file with the Trademark Office. Thus, I did not receive a copy of the November 25 Notice as served. Indeed, the Board's records indicate that the November 25, 2014 Notice was returned to the Board as being undeliverable.

14. Although the January 30, 2014 Notice of Default was mailed by the Board to my business address of record with the Trademark Office (the 55 Street location), I did not receive a copy of that notice as served because the 55 Street location closed in October 2007. Since the Petition for Cancellation and the Board's November 25, 2013 Notice were delivered to the incorrect address, I do not believe that I was in default at that time. Notably, the January 30, 2014 Notice of Default was mailed to my former trademark counsel (Robert C. Faber, Esq. of the law firm Ostrolenk, Faber, Gerb & Soffen, LLP (Docket Entry 6, Exhibit D). However, neither Mr. Faber nor anybody else at his law firm has contacted me to advise of the above-captioned cancellation proceeding. Thus, I did not learn of the cancellation proceeding until I conducted my own independent status check on April 3, 2014, whereupon I diligently retained trademark counsel.

15. On March 27, 2014, a Notice of Default was mailed to the 55 Street location. I did not receive a copy of the March 27 Notice of Default by mail. The March 27 Notice of Default ordered me to show cause by April 26, 2014 why a default should not be entered. I was advised on April 24, 2014 that the required papers would be filed with the USPTO by the April 26

deadline. The following day (April 25, 2014), I was advised by my attorney that the Board had issued another Notice of Default extending the time to show cause for another thirty days, until May 23, 2014.

16. By granting default judgment on May 8, 2014, the Board appears to have acted inconsistently with its April 23, 2014 Notice, which granted me thirty days (until May 23, 2014) to show cause why a default should not be entered.

The undersigned being warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of this document, declares that all statements made of my own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: New York, New York
November 19, 2014


Bo Vallin

EXHIBIT A

OSTROLENK, FABER, GERB & SOFFEN, LLP

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May 8, 2006

Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451



05-10-2006

U.S. Patent & TMO/TM Mail Rpt Dt. #72

Re: OFGS File No.: T/876-6
U.S. Trademark Reg. No.: 1,972,338
Issued: May 7, 1996
Registrant: Bo Vallin d/b/a Scandinavian Ski & Sports Shop
Mark: **SCANDINAVIAN & Design**

S I R:

Enclosed for filing is a Combined Declaration of Use (§8) and an Application for Renewal (§9) of the above-noted trademark registration, including:

X Power of Attorney/Appt. of Domestic Representative;
X One (1) specimen of current use for each class;
X OFGS Check No. 24529 in the amount of \$1,500.00, @\$500.00
per class in payment of the Government Filing Fee;
X Return-Addressed Post Card.

In the event the actual fee is greater than the payment submitted or is inadvertently not enclosed or if any additional fee is due, the Patent and Trademark Office is authorized to charge the underpayment to Deposit Account No. 15-0700.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner of Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on May 8, 2006.

Respectfully submitted,

Charles P. LaPolla
Name of applicant, assignee or
Registered Representative

Signature

May 8, 2006

Date of Signature

Charles P. LaPolla

OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone: (212) 382-0700

CPL:rc0
Encls.

**COMBINED DECLARATION OF USE IN COMMERCE AND
APPLICATION FOR RENEWAL OF REGISTRATION OF A MARK
WITH DECLARATION**

Mark : SCANDINAVIAN & DESIGN
Reg. No. : 1,972,338
Date : May 7, 1996
Class No(s) : 37, 41 and 42

TO THE COMMISSIONER FOR TRADEMARKS:

Bo Vallin, d/b/a Scandinavian Ski & Sports Shop
[Registrant Name]
United States Citizen
[Legal Status]
16 East 55th Street, New York, New York 10022
[Registrant Business Address]

The above-identified applicant for renewal requests that the above-identified registration granted to it on May 7, 1996, which it now owns as shown by records in the Patent and Trademark Office, be renewed in accordance with the provisions of Section 9 of the Act of July 5, 1946.

The mark shown in said registration is currently in use in commerce on or in connection with or on each of the services which are recited in the registration, the attached specimen showing the mark as currently used.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application, declares that all statements made in this application of his/her own knowledge are true and all statements made on information and belief are believed to be true.

The renewal fee is enclosed herewith.

POWER OF ATTORNEY

The undersigned hereby appoints customer no. 2352, OSTROLENK, FABER, GERB & SOFFEN, LLP and the members of the firm: Samuel H. Weiner, Robert C. Faber, Max Moskowitz, James A. Finder, William O. Gray, III, Louis C. Dujmich, Charles P. LaPolla, Douglas A. Miro and Peter S. Sloane, all members of the Bar of the State of New York, with offices at 1180 Avenue of the Americas, New York, New York, 10036-8403, (212) 382-0700, its attorneys to prosecute this application for renewal with full power of substitution and revocation and to transact all business in the Patent and Trademark Office in connection therewith. Please address all correspondence to:

Robert C. Faber, Esq.
OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, NY 10036-8403
Customer No. 2352

5/8/06

[Date]

By: 

Name: Bo Vallin

Title: Owner

EXHIBIT B











Scandinavian

SKI & SPORT SHOP



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